

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
WHITE FARMS TRUCKING, INC.,)	
)	CASE NO. BK10-43797-TJM
Debtor(s).)	
<u>HILDA L. SOLIS, SECRETARY OF LABOR,</u>)	A11-4049-TJM
UNITED STATES DEPARTMENT OF)	
LABOR,)	4:10CV3134
)	
Plaintiff(s),)	
)	CHAPTER 11
vs.)	
)	
WHITE FARMS TRUCKING, INC.;)	
TRIPLE C TRANSPORT, L.L.C.;)	
CRAIG WHITE, individually; and)	
VONNIE WHITE, individually,)	
)	
Defendant(s).)	

REPORT and RECOMMENDATION

This matter is before the court on the status reports filed by each party (Fil. Nos. 5, 6, and 7).

The United States Secretary of Labor filed this lawsuit in July 2010 under the Fair Labor Standards Act of 1938 to enforce statutory minimum wage requirements and to recover approximately \$39,000 in unpaid minimum wages owed to the defendants' employees, in addition to liquidated damages. Defendant White Farms Trucking, Inc., filed a petition for relief under Chapter 11 of the Bankruptcy Code on December 21, 2010, which stayed all proceedings against it and resulted in the referral of this lawsuit to this court.

The Secretary of Labor and defendant Triple C Transport agree that the matter should be returned in its entirety to the United States District Court. For economic reasons, the debtor would prefer to see the case proceed in district court without it.

This litigation concerns the Secretary of Labor's enforcement of wage and labor standards. Such actions fall within the scope of 11 U.S.C. § 362(b)(4) as an exercise by a governmental unit of its police and regulatory powers, and generally are not subject to the automatic stay. United States v. Commonwealth Cos. (In re Commonwealth Cos.), 913 F.2d 518, 521-22 (8th Cir. 1990); Donovan v. Health Care Resources, Inc., 44 B.R. 546 (W.D. Mo. 1984).

Moreover, the Secretary is not attempting to enforce a money judgment against the debtor, but intends to obtain entry of a money judgment which will fix the amount of her bankruptcy claim against the debtor. See Fil. No. 7 at 2. Commonwealth Cos., 913 F.2d at 524; E.E.O.C. v. Rath Packing Co., 787 F.2d 318, 326 (8th Cir. 1986).

Accordingly, I respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding for all further proceedings up to and including entry of judgment.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: June 28, 2011

RESPECTFULLY SUBMITTED,

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:
Kim Prichard Flores
Michael A. Stabler
Susan Josephson Willer
Bradford E. Kistler
Robert V. Ginn
Patrick R. Turner
Angela M. Boyer
Richard N. Berkshire
U.S. Trustee